

Applicant: Yoshihide MATSUO
Application Serial No.: 10/797,360-
240

AMENDMENTS TO THE DRAWINGS:

Figure 17 was filed on June 10, 2004, on three separate pages, each labeled "Figure 17." The replacement sheets filed herein represent Figure 17 on three sheets labeled "Figure 17," "Figure 17 (cont.)," and "Figure 17 (cont.)." Figure 18 was filed on June 10, 2004, on two separate pages, each labeled "Figure 18." The replacement sheets filed herein represent Figure 18 on two sheets labeled "Figure 18" and "Figure 18 (cont.)."

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REMARKS:

Prior to this amendment, claims 1-4, 6, 7, 9, 11, 13, and 14 were pending. Claims 6, 7, 9, 11, 13, and 14 were withdrawn and claims 1-4 were examined. With the entry of this Amendment, claims 1-4, 6, 7, 9, 11, 13, and 14 remain pending, with examined claims 1-4 amended and withdrawn claims 7, 11, and 13 amended to maintain consistency with the examined claims.

As an initial matter, Applicant respectfully requests that the Examiner reconsider her view that the election was not made with traverse. Applicant notes that he explicitly elected Group I with traverse and explained why the requirement to restrict was in error, as required by 37 C.F.R. 1.143. Traversal of a restriction requirement must "distinctly and specifically point[s] out" the errors in the requirement. M.P.E.P. § 818.03(a). Applicant believes he did precisely that. Specifically, Applicant "traverses the characterization of Group I as drawn to a compound from FERM BP-8417" because "claims 1, 3, and 4 are not limited to compounds obtainable from FERM BP-84." Applicant respectfully suggests that this response "distinctly and specifically" described the Office's mischaracterization of Group I. Traversing a restriction requirement also requires an Applicant to "specifically point out the reasons on which he or she bases his or her conclusions." Applicant believes he did so by presenting his belief that the Office improperly limited the scope of claims 1, 3, and 4. Thus, Applicant respectfully requests the Examiner acknowledge this traverse.

The Office objected to the drawings because Figures 17 and 18 are represented on more than one page with the same figure designation and suggested that replacement sheets be labelled as continuations. Applicant thanks the Office for the

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suggestion and herein provides replacement drawings that specify that Figures 17 and 18 are represented on continuation drawing sheets.

The Office objected to the specification because the sequence identifier "SEQ ID NO:" was not used and because the disclosure included embedded hyperlinks. Applicant herein amends paragraphs 24 and 26, and Table 1, to include the sequence identifiers for SEQ ID NOS:1-4 and to remove the hyperlink.

The Office objected to the use of the term "novel," as a subjective term. Applicant herein amends claims 1-4 (as well as withdrawn claims 7, 11, and 13) to remove the term "novel."

The Office rejected claims 1-4 under 35 U.S.C. § 112, first paragraph, because a Declaration verifying the deposit of the microorganism YM-2-23 is not presently in the file. Applicant now provides a Deposit Declaration that confirms deposit under the Budapest Treaty (§ 3) and the irrevocable removal of all restrictions upon granting of a patent (§ 5), and files it concurrently with this response. Thus, this rejection has been overcome.

For the foregoing reason, Applicant urges that claims 1-4 are in condition for allowance and respectfully requests rejoinder of withdrawn claims 6, 7, 9, 11, 13, and 14.

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If there are any fees due in connection with the filing of this preliminary amendment, please charge the fees to Deposit Account No. 06-0916.

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: February 16, 2007

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